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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/197,278	11/20/1998	BRIAN J. BROWN	S63.2-6769	1094

490 7590 11/29/2001

VIDAS, ARRETT & STEINKRAUS, P.A.  
6109 BLUE CIRCLE DRIVE  
SUITE 2000  
MINNETONKA, MN 55343-9185

EXAMINER

BUI, VY Q

ART UNIT	PAPER NUMBER
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3731

DATE MAILED: 11/29/2001

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/197,278

Applicant(s)

BROWN ET AL.

Examiner

Vy Q. Bui

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 05 September 2001.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 39-58 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 46-49 is/are allowed.
- 6) ☒ Claim(s) 39, 50, 52-54 and 56-58 is/are rejected.
- 7) ☒ Claim(s) 40-45, 51 and 55 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☒ Interview Summary (PTO-413) Paper No(s). 20
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 39, 50, 52-54, and 56-58 are rejected under 35 U.S.C. 102(b) as being anticipated by DE29708879U1.

As to claim 39, DE29708879U1 (Fig. 3) discloses stent 1 having first, second and third consecutive undulating band-like elements (5, 10 and 10') separated by short first and second interconnecting elements (7, 7'). The number of peaks of the first undulating band-like element separating circumferentially adjacent first interconnecting elements (7) is less than the number of peaks of the second undulating band-like element separating circumferentially adjacent second interconnecting elements.

As to claims 50, and 54, DE29708879U1 (Fig. 3) discloses stent 1 having first undulating band-like (5) and second undulating band-like (10), first interconnecting elements (7) being offset circumferentially and longitudinally along the stent. A first path defined along the first undulating band-like element (5) and a second path defined

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along the second undulating band-like element (10), wherein the first path length is different from the second path length as recited in the claim 50.

As to claims 52- 53, and 56-57, the first undulating band-like element (5) and the second undulating band-like element (10) are characterized by different amplitudes and the first path length is longer than the second path length.

AS to claim 58, band-like elements (10) and (10') have the same amplitude and wavelength.

#### ***Allowable Subject Matter***

1. Claims 40-45, 51 and 55 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
2. Claims 46-49 are allowed.

#### ***Conclusion***

1. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

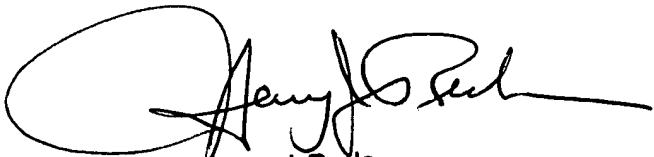
2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vy Q. Bui whose telephone number is (703) 306-3420.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Recla, can be reached at (703)308-1382. The fax number for this Unit is (703)308-2708.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist at (703)308-0858

VQB *VB*

November 16, 2001.

  
Henry J. Recla  
Supervisory Patent Examiner  
Group 3700